

**MINUTES  
PLANNING BOARD  
TOWNSHIP OF CHATHAM  
JUNE 20, 2016**

Mr. Thomas Franko called the meeting of the Planning Board to order at 7:30 P.M.

**Adequate notice** of the meetings of the Planning Board of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2016 and January, 2017 was published in the *Chatham Courier* and the *Morris County Daily Record*, a copy was filed with the Municipal Clerk and a copy was placed on the bulletin board in the main hallway of the Municipal Building.

**Roll Call**

Answering present to the roll call were Mr. Franko, Mr. Hurring, Mrs. Swartz, Mr. Travisano, Mr. Nelson and Mr. Murray. Mr. Brower, Ms. Hagner, Mr. Ciccarone, Mr. Sullivan and Mr. Saluzzi were absent.

Also present were Township Engineer John Ruschke, Township Planner Frank Banisch and Amanda C. Wolfe, Esq.

**Approval of Minutes**

Mr. Nelson moved to approve the minutes of the June 6, 2016 meeting. Mr. Travisano seconded the motion, and it carried unanimously.

**Hearing & Memorialization**

**PLAN: 15-61-10 BHEE PROPERTIES, LLC, 697 Fairmount Avenue, BLOCK 61, LOT 10. Request for an extension of time until September 30, 2016 to record the subdivision deed.**

Attorney Stephen Barcan was present to represent Bhee Properties. Mr. Barcan said that the applicant received minor site plan approval from the Planning Board on December 15, 2015. The time to record the subdivision with the Morris County Clerk's office will expire on June 28, 2016. Mr. Barcan said that the Municipal Land Use Law contains a provision that allows the Planning Board to grant an extension for the recording to be filed, and the applicant is requesting a three month extension.

Mr. Hurring asked what would happen if the extension is not granted. Mr. Barcan indicated that the original application would have to be resubmitted for a brand new hearing.

Mrs. Swartz asked about the house designs. Mr. Franko indicated that the matter of house designs has been resolved.

Mr. Nelson moved to approve the request for an extension to record the subdivision deed. Mr. Murray seconded the motion.

**Roll Call:** Mr. Franko, Aye; Mr. Hurring, Aye; Mrs. Swartz, Aye; Mr. Brower, Absent; Mr. Ciccarone, Absent; Ms. Hagner, Absent; Mr. Sullivan, Absent; Mr. Saluzzi, Absent; Mr. Travisano, Aye; Mr. Nelson, Aye; Mr. Murray, Aye.

## **RESOLUTION**

**Calendar No. PLAN: 16-61-10**

### **RESOLUTION OF THE PLANNING BOARD OF THE TOWNSHIP OF CHATHAM, MORRIS COUNTY, STATE OF NEW JERSEY, REGARDING THE APPLICATION OF BHEE PROPERTIES, LLC FOR EXTENSION OF TIME TO RECORD SUBDIVISION DEED TAX LOT 10, BLOCK 6**

**WHEREAS**, BHEE PROPERTIES, LLC (the “Applicant”), seeks an extension of time to record the subdivision deed for properties identified as Lots 10.01 and 10.02, Block 61 (formerly Lot 10, Block 61) on the Tax Map fronting on Shunpike Road in Chatham (the “Properties”), and has made application to the Township of Chatham Planning Board (the “Board”) for the following:

An extension of the 190 day filing requirement, as set forth in N.J.S.A. 40:55D-47(f) and Section 30-61.5(e) of the Land Development Ordinance, such that Applicant can record the subdivision deed.

**WHEREAS**, a public hearing was held by the Planning Board at its regular meeting on June 20, 2016; and

**WHEREAS**, the Applicant was represented Stephen E. Barcan, Esq. of Wilentz, Goldman & Spitzer, P.A.; and

**WHEREAS**, the Board took action on this application at its meeting on June 20, 2016 in accordance with N.J.S.A. 40:55D-10(g)(1) by virtue of the adoption of this Resolution; and

**WHEREAS**, the Planning Board makes the following findings of fact and conclusions:

1. The Applicant received approval for a minor subdivision with associated variances on December 15, 2015 as set forth in the Resolution of same date. Condition 26 of the Resolution requires the Applicant to prepare deeds of minor subdivision, subject to the review and approval of the Planning Board Attorney and Township Engineer, and to record same with the Morris County Clerk’s Office. Accordingly, the 190 day period to record and perfect the subdivision expires on June 28, 2016.

2. Condition 31 of the Resolution further requires the Applicant to comply with all conditions “imposed by the Morris County Planning Board, including those imposed in the Subdivision Report dated August 20, 2015, except to the extent modified by the County Planning Board before its approval is finalized, as referenced in #13 on page 7.” The Applicant has not yet received final approval from the Morris County Planning Board.

3. By letter dated May 24, 2016, Applicant’s counsel provided the Board with a copy of Robert C. Moschello, P.E., Applicant’s engineer’s “Report on Status of Morris County Planning Board Approval” dated May 17, 2016 (the “Report”). The Report explains that the Applicant has been working with the Morris County Planning Board to relocate a drainage pipe away from a neighboring property (rather than obtain a drainage easement from the owner of Lot

9) and to resolve a disagreement regarding the proposed driveway width (the County prefers 18 feet, whereas the Applicant proposed two 12 foot driveways totaling 24 feet in width).

4. The Applicant requests a three month extension from June 28 to September 30, 2016, to provide it with sufficient time to obtain the required Morris County Planning Board approval and to then prepare the appropriate subdivision deeds for filing with the Morris County Clerk's Office.

5. The Board finds the Applicant has demonstrated good cause, as is required pursuant to Section 30-61.5(e), to warrant the Board granting an extension of the 190 day time period. The Board also finds that the Applicant has demonstrated (1) that the developer was barred or prevented directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities (i.e., Morris County Planning Board), and (2) that the developer applied promptly for and diligently pursued the required approvals, as is required by N.J.S.A. 40:55D-47(f).

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Chatham, that the Applicant's request for additional time to record the attached subdivision deed is hereby granted such that recordation shall be effectuated on or before September 30, 2016.

Mr. Nelson moved to approve the resolution. Mr. Murray seconded the motion.

**Roll Call:** Mr. Franko, Aye; Mr. Hurring, Aye; Mrs. Swartz, Aye; Mr. Brower, Absent; Mr. Ciccarone, Absent; Ms. Hagner, Absent; Mr. Sullivan, Absent; Mr. Saluzzi, Absent; Mr. Travisano, Aye; Mr. Nelson, Aye; Mr. Murray, Aye.

### **Hearing**

**Plan: 16-9-1 (March 21, 2016) Longview at Chatham, LLC, Longview Ave, Block 9, Lots 1 & 1.01, Block 32 Lot 2, Block 33 Lots 1, 1.01, 1.02, 14, 14.01, 17 & 20. Variance relief from certain conditions contained in June 4, 2012 Prior Planning Board Approval and Engineering conditions detailed in review dated January 29, 2016.**

Mr. Schaffer provided a recap of his client's application. He said that at this meeting there will be a presentation of the landscaping plan and soil stabilization plan for Mountainside Drive.

Mr. Franko opened the floor for the public to ask questions of Mr. Moschello.

1. Bob Wislocky, 3 Jodi Lane, said that he has never had issues with water in his basement, and he is concerned how this project will impact stormwater runoff. He noted that the back area of Lot 14.01 is supposed to have a non-disturbance area, and there are not any trees in said area on the lot. He sought to introduce an exhibit showing where his house is located, but was advised that he could present testimony at the conclusion of the Applicant's presentation of its case.

Mr. Franko said that for procedural reasons Mr. Wislocky needs to limit himself to asking questions rather than giving commentary on the application.

Mr. Wislocky asked if there are drywells in the project. Mr. Moschello addressed the drainage pattern on the project, and said that there will be less runoff onto the neighboring properties on Jodi Lane. He also indicated that the only proposed drywell is to be located on Lot 14. Mr. Wislocky asked who will be responsible for inspecting the stormwater management system, and what recourse he would have if the system fails. Mr. Moschello said that an operations maintenance manual was recorded with the deeds for these properties, and the manual outlines who is responsible for which components of the stormwater management system. He also said that there would be recourse through either the Township or the Homeowners Association if there is an issue. Mr. Schaffer said that the zoning officer would be able to investigate any complaints to determine the source of any stormwater problems. Mr. Wislocky asked if residents would be informed if any reports of a failed system are made. Mr. Schaffer noted that OPRA requests can be submitted for such reports if they exist.

Mr. Moschello added that the section of the non-disturbance area without any trees had been clear cut by a prior owner of the property, and there are not any plans to plant trees in the subject area.

2. Denise Goldfield, 37 Ormont Road, said that she has a problem with stormwater runoff in her yard due to the development project, and she wants to know how the problem will be addressed. Mr. Moschello said that he has not had a chance to investigate this issue in detail, and the runoff onto this property would have been reduced from the construction performed. Mrs. Goldfield said that the detention basins are not working.

Mr. Hurring asked Mr. Gunn to comment on his plans to remediate the issue on Mrs. Goldfield's property. Mr. Gunn said that he brought the matter to his engineer's attention, and they observed the property during the site visit. Mr. Gunn acknowledged that there is evidence of runoff on Mrs. Goldfield's property, the source of which has not yet been identified. Mr. Schaffer suggested that Mr. Moschello and a representative from Mr. Ruschke's office meet at the site to investigate the source of the runoff. Mr. Gunn was sworn in to give testimony and testified that his earlier statements were also truthful. Mrs. Goldfield consented to having the engineers determine what is causing the runoff.

Mr. Hurring asked if the swale on the rear of the project is functional. Mr. Moschello said that it is operational, and there is not any evidence of water exceeding the swale.

3. Mr. Wislocky asked if the piping at the detention basin had been recently cemented during the site visit, as they appeared wet. Mr. Wislocky referenced a picture of the piping which was entered as an exhibit. Mr. Wislocky confirmed that he had taken the picture on June 4, 2016 and that the photograph was an accurate depiction of the pipe as it existed at that time. After reviewing the picture, Mr. Moschello said that they had been recently grouted.
4. Mr. Blumenthal asked to see the landscape design. Ms. Wolfe said that the presentation of that plan will be forthcoming.

Mr. Schaffer said that Primavera Contractors have been retained by the developer to help with the completion of this project. He said that the landscape architect is currently in the hospital, however one of the principals of Primavera, Mr. Joe Fonseca, was present to discuss the landscape plan. Mr. Franko noted that Mr. Fonseca is being presented as a fact witness rather than as an expert witness.

Mr. Fonseca said that he is under contract to purchase seven of the lots in this development. He also provided information on other work he has performed in the Township. Mr. Fonseca said that he has also been working with Mr. Gunn to complete some of the items required by Mr. Ruschke's office and cited examples of this. The retaining wall which had been built in the wrong location has been moved to the proper location. Mrs. Swartz asked if Mr. Ruschke has seen the work that has been performed on the project over the past two weeks. Mr. Ruschke said that he has been monitoring the project, but he has not been there personally during the past two weeks.

Mrs. Swartz asked Mr. Fonseca how long he has been involved with the project. Mr. Fonseca said that he purchased Lot 14.01 five months ago. He also noted that the violations occurred prior to his ownership.

Mr. Schaffer asked Mr. Fonseca to give a description of the landscape plan. Mr. Fonseca said that the plan will be to have native plants to stabilize the slope, and to have consistency with the landscaping on the several lots. Ms. Wolfe reminded Mr. Fonseca that he could not provide expert testimony as he was not a licensed landscape architect.

Mr. Banisch indicated that the landscape architect should be present to provide testimony for the landscaping plan. Mr. Travisano said that he would like to see a landscape plan for the whole project, not just a single lot.

Mr. Fonseca said that he plans to plant a natural buffer in the rear of lot 14.01. Ms. Wolfe asked if Mr. Fonseca would stipulate to performing the same sort of landscaping work on the additional lots for which Primavera is the contract purchaser. Mr. Schaffer asked to wait until the landscape architect offers testimony to agree to such a stipulation.

Mr. Nelson asked about other properties developed by Primavera in Chatham Township. Mr. Fonseca listed several properties on which Primavera has built homes.

Mr. Franko opened the floor for the public to ask questions of Mr. Fonseca.

1. Martin Blumenthal, 99 Longview Ave., asked if Lots 14 & 14.01 share a driveway. Mr. Fonseca said that there are not any common driveways. Mr. Moschello said that there will be side-by-side driveways rather than a common driveway.

There being no further questions, Mr. Franko asked Mr. Schaffer to call his next witness. Mr. Schaffer recalled Mr. Moschello.

Mr. Moschello submitted Exhibit A-13 titled Mountainside Drive Stabilization and Enhancement. He said that it addresses the area to the west of Mountainside Drive where steep slope disturbance occurred. Mr. Moschello said that a landscaping and stabilization plan has been prepared, and the exhibit presents the concept. Two varying levels of stabilization enhancement are being proposed, and Mr. Moschello discussed the details of the two levels.

Mr. Hurring asked if the proposal is a better plan than if the area had not been disturbed at all. Mr. Moschello said that there would have been a 2:1 slope with grass had there not been any disturbance. He also said that his proposal is an improvement over leaving the section alone. Mr. Hurring asked Mr. Ruschke to comment on what further concerns the Board should have. Mr. Ruschke asked why the red maple is being incorporated rather than other species of trees. Mr. Moschello said that he is open to suggestion for tree selection, and Mr. Ruschke suggested that the trees chosen should be consistent with other areas of the development.

Mr. Franko opened the floor for the public to ask questions of Mr. Moschello.

1. Mr. Blumenthal asked about two rows of rocks visible in a photo included in the exhibit. Mr. Moschello said that the rocks will be removed.

There being no further questions, Mr. Franko asked Mr. Schaffer to call his next witness.

Mr. Schaffer commented that the retaining wall in the cul-de-sac has been reconstructed in the proper location. He also indicated that the applicant wants to see the runoff issue on Mrs. Goldfield's property solved, and the matter will be further investigated during the site visit.

Mr. Schaffer submitted a copy of a signed agreement between the applicant and Mr. & Mrs. Blumenthal regarding their acceptance of the driveway in its present location as graded at 18.6%. He also provided some background as to why the driveway needed to be relocated. Mr. Blumenthal said that he had not agreed to the deviation in the grade. Mr. Schaffer said that his client can itemize \$30,000 worth of improvements made to the Blumenthal's property. Mr. Franko asked the Blumenthal's if the signatures on the agreement were theirs, and the Blumenthal's indicated that they had signed the agreement. Ms. Wolfe noted that the Township is not party to the agreement.

Mr. Schaffer said that his geotech engineer will offer additional testimony at a future Planning Board meeting. Friction testing is being performed on soil and liner material from the detention basin to see if the angle of friction is different from the general postulate. The test will also assess if the geogrid is a good solution to prevent sliding.

Mr. Moschello indicated that the wooden guide rail on the lower portion of the project will be replaced with a steel guide rail which meets DOT standards. Rub rail will also be installed on the guide rail. On the eastern cul-de-sac, additional wood guide rails will be installed by the detention basin. Rub rail will be installed on the wood guide rail as well. Mrs. Swartz asked if the guide rail should be three feet off the curb. Mr. Moschello said that the DOT standard is three feet, however there is a retaining wall which prevents the guard rail from being installed three feet from the curb. Mr. Ruschke asked if there are steep slopes in the vicinity of the

proposed guide rail. He also suggested a temporary construction easement be sought from the owner of a neighboring property so that fill can be placed at the site to eliminate the need for the guide rail. Mr. Moschello said that the amount of time to get the easement and perform the work would be longer than the amount of time it would take to install the guide rail. Mr. Schaffer indicated that the applicant was in touch with the neighbor, and the neighbor was concerned about the impact a temporary construction easement would have on trees.

Mr. Ruschke recommended that time limits be incorporated for improvements such as installation of street lights, monuments and street trees. Mr. Schaffer said that the applicant is not adverse to such time limits. Mr. Ruschke also noted that the final course of paving is currently required to be performed in 2017, and the condition anticipated that the construction of the homes would have already begun. He said that the applicant will have to seek relief to amend that requirement if the paving will not be performed on schedule.

Mr. Ruschke said that there is a deviation in the plan for underground utilities. Mr. Moschello said that a design waiver will be sought. He also described the overhead lines that provide power to the Blumenthal's house. Mr. Moschello said that the applicant has been in touch with JCP&L about installation of the electric utility, and JCP&L proposed installing two additional utility poles.

Mr. Schaffer said that at the continuation of the hearing the landscape architect will be present, and he will address the need for an extension for final paving. Mr. Schaffer also hopes to be able to address the runoff situation on the Goldfield's property at the next meeting. The geotechnical engineer will also be present at the next meeting.

Mrs. Swartz asked about the timeframe for having JCP&L start laying electrical service lines. Mr. Moschello said that JCP&L has already begun pulling wire through conduits, and overhead work will still need to be performed.

The hearing was carried to the Planning Board meeting scheduled for July 11, 2016. Mr. Schaffer indicated that the applicant consents to an extension of the time to act.

Public comment will be allowed after the testimony has been completed.

Mr. Travisano moved to adjourn at 9:25 PM. Mr. Nelson seconded the motion, and it carried unanimously.

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Gregory J. LaConte  
Planning Board Recording Secretary